

Questions and Discussion



Appendix

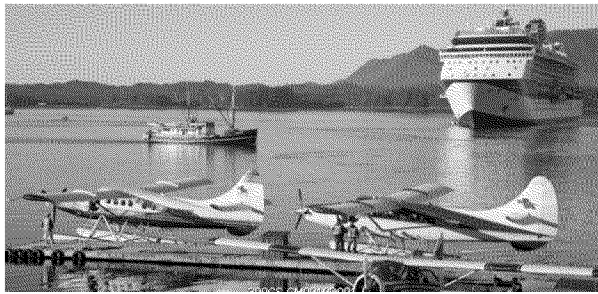
Additional Details on the CWR

Subject	Old Rule	Proposed Rule	Final Rule
Navigable Waters	Jurisdictional	Same	Same
Interstate Waters	Jurisdictional	Same	Same
Territorial Seas	Jurisdictional	Same	Same
Impoundments	Jurisdictional	Same	Same
Tributaries to the Traditionally Navigable Waters	Jurisdictional; did not define tributary	Defined tributary for the first time as water features with bed, banks and ordinary high water mark, and flow downstream.	Same as proposal except wetlands and open waters without beds, banks and high water marks will be evaluated for adjacency.
Adjacent Wetlands/Waters	Jurisdiction included wetlands adjacent to traditional navigable waters, interstate waters, the territorial seas, impoundments or tributaries.	Included all waters adjacent to jurisdictional waters, including waters in riparian area or floodplain, or with surface or shallow subsurface connection to jurisdictional waters.	Includes waters adjacent to jurisdictional waters within a minimum of 100 feet and within the 100-year floodplain to a maximum of 1,500 feet of the ordinary high water mark.
Isolated or “Other” Waters	Jurisdiction included all other waters the use, degradation or destruction of which could affect interstate or foreign commerce.	Included “other waters” where there was a significant nexus to traditionally navigable water, interstate water or territorial sea.	Includes specific waters that are similarly situated: Prairie potholes, Carolina & Delmarva bays, pocosins, western vernal pools in California, & Texas coastal prairie wetlands when they have a significant nexus. Includes waters with a significant nexus within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas, as well as waters with a significant nexus within 4,000 feet of jurisdictional waters.
Exclusions to the definition of “Waters of the U.S.”	Excluded waste treatment systems and prior converted cropland.	Categorically excluded those in old rule and added two types of ditches, groundwater, gullies, rills and non-wetland swales.	Includes proposed rule exclusions, expands exclusion for ditches, and also excludes constructed components for MS4s and water delivery/reuse and erosional features.

These slides come from Regional presentations of the rule – at one point I believe they were OGC vetted

Unchanged Categories

- Traditional Navigable Waters (TNWs)
 - Tidally influenced or
 - Currently, historically, or potentially used in commerce



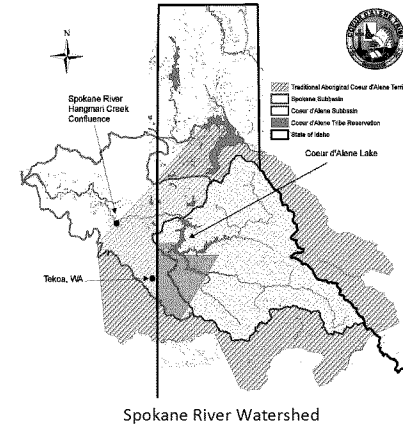
Ketchikan

- Territorial Seas
 - Open ocean out to 3 miles



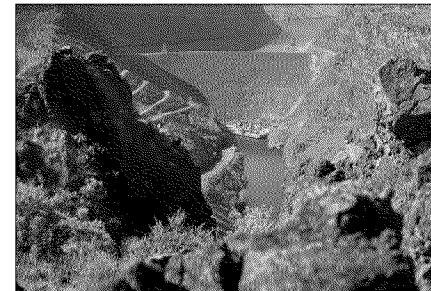
Near Cape Flattery, WA

- Interstate Waters
 - Flow across, or form part of, state boundaries



Spokane River Watershed

- Impoundments
 - Of other Waters of the U.S.



Lake Simtustus, OR



Eliminated: “Isolated” Waters


- Waters with existing or potential link to interstate or foreign commerce (e.g., recreation, fishing, industrial use)
- Supreme Court (*SWANCC* & *Rapanos*)
 - Can’t base jurisdiction solely on migratory bird use
 - Must have significant nexus to chemical, physical, & biological integrity of TNW, interstate water, or territorial sea
- Significant Nexus (SigNex)
 - More than insubstantial or speculative effect
 - Either alone or in combination with other similarly situated waters in the region
 - In the region = watershed that drains to TNW, interstate water, or territorial sea
 - Similarly situated = Perform similar functions & are sufficiently close together or to the other WOTUS to function together

Revised Categories: Science Confirms SigNex

- *All* Tributaries that....

- Meet the definition (new):

- Contribute flow to TNW or interstate water

-  Have bed, banks, & OHWM (spatial discontinuity okay)

- Natural, man-altered, or man-made

- Includes some ditches



Blue Creek, Shoshone-Paiute Tribes




Skagit County, WA

- *All* Adjacent Waters

-  No longer just wetlands

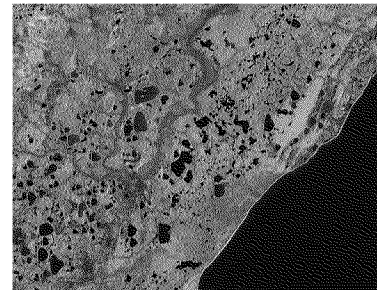
- Bordering, contiguous, neighboring

-  Neighboring (new definition) = starting within:

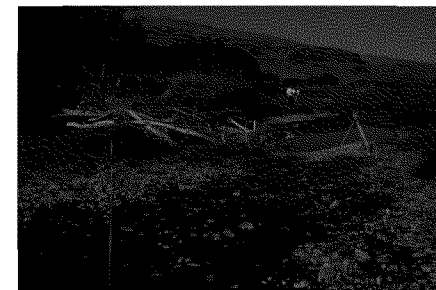
- 1,500' of high tide line or
 - First 1,500' of 100-year floodplain or, otherwise,
 - 100'....

of another water of U.S.

-  Not if in established farming, ranching, or silviculture use



Arctic Coastal Plain, AK



Umatilla River Floodplain Wetlands

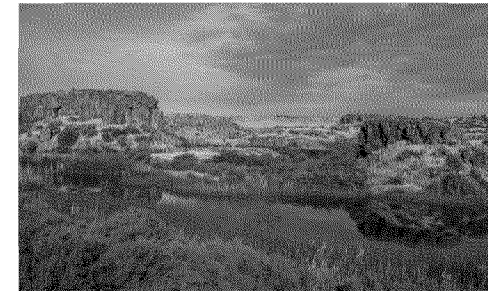


Case-specific SigNex Evaluation: (a)(7) AND (a)(8)

- Waters confirmed to be similarly situated
 - Carolina & Delmarva Bays
 - Pocosins
 - Texas Coastal Prairie Wetlands
 - Prairie Potholes
 - Western Vernal Pools *in California*
- Other Waters within...
 - 100-year floodplain of a TNW or interstate water or
 - 4,000' of a TNW, interstate water, or tributary, or impoundment thereof



Table Rock Vernal Pool, Oregon



Channeled Scablands, Washington

■ Functions Considered

- Sediment trapping
- Nutrient recycling
- Pollutant trapping, filtering, transformation, or transport
- Flood water retention/attenuation
- Runoff storage
- Flow contribution
- Export of organic matter or food resources
- Feeding, nesting, spawning, or rearing habitat for species from TNW, interstate water, or territorial sea

Exclusions: What *Aren't* WOTUS

- **Waste Treatment Systems**

- **Prior Converted Cropland**



- **Ditches that....**

- Have ephemeral flow & are not a relocated tributary
- Have intermittent flow & neither are a relocated tributary nor drain wetlands
- Do not flow to a TNW, interstate water, or territorial sea

- **Irrigated Areas** that would otherwise be dry land



- **Stock Watering, Irrigation, Settling, Rice Growing, Log Cleaning, Cooling, & similarly used lakes & ponds built in dry land**

- **Reflecting Pools** built in dry land

- **Swimming Pools** built in dry land

- Small **Ornamental Waters** created in dry land

- **Construction & Mining Site Depressions** created in dry land



- **Sand, Gravel, & Borrow Pits** excavated from land



- **Gullies & Rills** that don't meet the definition "tributary"



- **Non-wetland Swales**



- Lawfully constructed **Grassed Waterways**



- **Puddles**



- **Groundwater**



- **Stormwater conveyance, treatment, or storage features** constructed in dry land



- **Wastewater recycling features** (detention & retention basins, groundwater recharge basins, percolation ponds, distributary systems) constructed in dry land

